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10/031,217	04/18/2002	Bernad Fischer	D978 1160.1	6184
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EXAMINER				
SELLERS, ROBERT E				
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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No. 10/031,217	Applicant(s) FISCHER ET AL	
Examiner Robert Sellers	Art Unit 1712	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
 Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of the communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 November 2003 and 02 January 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) 7, 8, 10, 17 and 18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6, 9 and 11-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
 a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-648) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ | 6) <input type="checkbox"/> Other _____ |

The election with traverse of Group I in the response filed November 10, 2003 is acknowledged. The traversal is on the grounds that the distinctness between the inventions has not been established. This is not found persuasive for the reasons of record set forth on page 3 of the restriction and election of species requirement filed December 1, 2003.

The requirement is still deemed proper and is therefore made FINAL.

Claims 17 and 18 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to nonelected inventions, there being no allowable generic or linking claim. Applicant timely traversed the restriction and election of species requirement in the election filed November 10, 2003. Claims 7, 9 and 10 are withdrawn as being directed to non-elected species.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 12 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

There is no clear line of demarcation between the auxiliary agents of line 3 and the fillers, pigments and hydrophobizing agents because the term "auxiliary agents" is generic to and encompasses filler, pigments and hydrophobizing agents.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-6, 9, 11, 12 and 16 are rejected under 35 U.S.C. 102(e) as being anticipated by Kastl et al.

Kastl et al. (col. 4, Example 1) shows a method for producing a plate comprising compounding epoxidized linseed oil and a partial ester of maleic anhydride and dipropylene glycol, pre-crosslinking at 50°C, compounding fillers therewith, press-molding plates from the pre-crosslinked formulation, and curing the plate at 180°C.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kastl et al. as applied to claims 1-6, 9, 11 and 12 hereinabove, and further in view of Hover et al.

Kastl et al. does not recite the claimed post-mold curing step (4) by peroxidic crosslinking and/or radical polymerization of unsaturation.

Hover et al. (col. 4, lines 11-39) teaches a process of preparing a floor covering (col. 2, line 7) wherein a fatty acid oil such as linseed oil is pre-crosslinked to intermediate product I which is compounded with elastomers, fillers and, optionally, pigments. The mixture is cured in the presence of a peroxide at increased temperature.

It would have been obvious to conduct the curing of Kastl et al. in the presence of the peroxide of Hover et al. in order to completely react the unsaturation emanating from the epoxidized fatty acid ester and crosslinking agent which is the inherent mechanism of the peroxide crosslinking agent.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Van der Linde espouses the partial pre-reaction of a reaction product of an epoxidized fatty acid ester and polycarboxylic acid blended with a carboxylic acid-modified ester of a polyol wherein the epoxidized fatty acid ester and polycarboxylic acid are reacted prior to partial pre-reaction with the carboxylic acid-modified ester of a polyol.

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